

JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

FEB 14 2006

DOCKET NO. 1657

FILED
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BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

***IN RE VIOXX MARKETING, SALES PRACTICES AND PRODUCTS
LIABILITY LITIGATION***

***BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D.
LOWELL JENSEN, J. FREDERICK MOTZ,* ROBERT L. MILLER, JR.,
KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE PANEL***

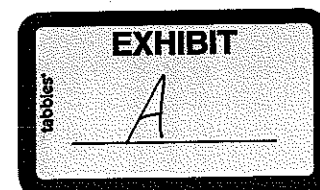
TRANSFER ORDER

Presently before the Panel are motions, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiffs in 80 actions and by health care defendants in the District of Massachusetts action and the Western District of Texas action to vacate the Panel's orders conditionally transferring the actions listed on Schedule A to the Eastern District of Louisiana for inclusion in the Section 1407 proceedings occurring there in this docket. Merck & Co., Inc., favors inclusion of these actions in MDL-1657 proceedings.

On the basis of the papers filed and hearing session held, the Panel finds that these actions involve common questions of fact with actions in this litigation previously transferred to the Eastern District of Louisiana. Transfer of the actions to that district for inclusion in the coordinated or consolidated pretrial proceedings occurring there will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Any pending motions to remand to state court can be presented to and decided by the transferee judge. *See, e.g., In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001). The Panel further finds that transfer of these actions is appropriate for the reasons expressed in the original order directing centralization in this docket. In that order, the Panel held that the Eastern District of Louisiana was a proper Section 1407 forum for actions involving claims of liability for allegedly adverse effects arising from the ingestion of Vioxx. *See In re Vioxx Products Liability Litigation*, 360 F.Supp.2d 1352 (J.P.M.L. 2005).

Some opposing plaintiffs and the health care defendants argue that the presence of individual and/or local questions of fact as well as differing legal theories should militate against inclusion of these actions in MDL-1657 proceedings. We are unpersuaded by these arguments. Inclusion of these actions in Section 1407 proceedings has the salutary effect of placing all the related actions before a single judge who can formulate a pretrial program that: 1) prevents repetition of previously considered matters;

* Judge Motz took no part in the decision of this matter.



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2) allows pretrial proceedings with respect to any non-common issues to proceed concurrently with pretrial proceedings on common issues, *In re Multi-Piece Rim Products Liability Litigation*, 464 F.Supp. 969, 974 (J.P.M.L. 1979); and 3) ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties. *See In re StarLink Corn Products Liability Litigation*, 152 F.Supp.2d 1378 (J.P.M.L. 2001). It may be, on further refinement of the issues and close scrutiny by the transferee judge, that some claims or actions can be remanded to their transferor districts for trial in advance of the other actions in the transferee district. Should the transferee judge deem remand of any claims or actions appropriate, procedures are available whereby this may be accomplished with a minimum of delay. *See Rule 7.6, R.P.J.P.M.L.*, 199 F.R.D. at 436-38.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:



Wm. Terrell Hodges
Chairman

SCHEDULE A

MDL-1657 -- In re Vioxx Marketing, Sales Practices and Products Liability Litigation

Middle District of Alabama

Theatus Rawdon Beaty v Merck & Co., Inc., et al., C.A. No. 2:05-880

Southern District of Illinois

Elvin Elswick v. Merck & Co., Inc., et al., C.A. No. 3:05-645

Stanely McNulty v Merck & Co., Inc., et al., C.A. No. 3:05-661

Gary Grizzell v. Merck & Co., Inc., et al., C.A. No. 4:05-4170

Eastern District of Kentucky

Ronald E. Smith, et al. v. Merck & Co., Inc., C.A. No. 3:05-68

James Parsons, et al. v. Merck & Co., Inc., C.A. No. 5:05-412

Gene Patterson, et al. v. Merck & Co., Inc., C.A. No. 5:05-413

Maudie F. Jones, et al. v. Merck & Co., Inc., C.A. No. 5:05-425

Gerlene Stacy v. Merck & Co., Inc., C.A. No. 6:05-525

Bonnie Engle v. Merck & Co., Inc., C.A. No. 6:05-565

James T. Bevins, et al. v. Merck & Co., Inc., C.A. No. 7:05-317

James Howell, et al. v. Merck & Co., Inc., C.A. No. 7:05-330

Western District of Kentucky

Elvis Meadors v. Merck & Co., Inc., et al., C.A. No. 1:05-136

Harold Reiser v. Merck & Co., Inc., et al., C.A. No. 1:05-156

James W. Thompson, et al. v. Merck & Co., Inc., C.A. No. 3:05-549

Jerry W. Kinslow, et al. v. Merck & Co., Inc., C.A. No. 3:05-550

Carl D. Mahan, et al. v. Merck & Co., Inc., C.A. No. 3:05-565

Samuel Bain, et al. v. Merck & Co., Inc., C.A. No. 3:05-566

Wenceslaus Klimesh, et al. v. Merck & Co., Inc., C.A. No. 3:05-568

Glen Kelly v. Merck & Co., Inc., C.A. No. 3:05-569

Barry M. Kinslow v. Merck & Co., Inc., C.A. No. 3:05-570

Barbara A. Reeves, et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-571

Betty Wooldridge, et al. v. Merck & Co., Inc., C.A. No. 3:05-572

Bernice Eversole, et al. v. Merck & Co., Inc., C.A. No. 3:05-573

Earl G. Crank, et al. v. Merck & Co., Inc., C.A. No. 3:05-581

Phillip Metcalf, et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-582

Allen Dowell, et al. v. Merck & Co., Inc., C.A. No. 3:05-585

Lois Zoll v. Merck & Co., Inc., C.A. No. 3:05-586

Helen Dennison v. Merck & Co., Inc., C.A. No. 3:05-587

Lana Yaggie, et al. v. Merck & Co., Inc., C.A. No. 3:05-588

Kim Young, et al. v. Merck & Co., Inc., C.A. No. 3:05-589

William E. Garrett, et al. v. Merck & Co., Inc., C.A. No. 3:05-590

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Western District of Kentucky (continued)

William M. Adams, Jr, et al v. Merck & Co., Inc., C A. No. 3:05-591
Linda Howard, et al v. Merck & Co., Inc., C.A. No. 3:05-592
Richard Wigginton, et al v. Merck & Co., Inc., C.A. No. 3:05-593
Sharon McDonald v. Merck & Co., Inc., et al., C.A. No. 3:05-595
Dennie Miller, et al. v. Merck & Co., Inc., C A. No. 3:05-600
David G. Thomas v. Merck & Co., Inc., C A. No. 3:05-601
George R. Hubbard, et al. v. Merck & Co., Inc., C.A. No. 3:05-602
Joseph E. Newton, et al v. Merck & Co., Inc., C.A. No. 3:05-603
Elmer Smith, et al. v. Merck & Co., Inc., C.A. No. 3:05-605
Violet Bailey, et al. v. Merck & Co., Inc., C A. No. 3:05-606
Joyce Skillman v. Merck & Co., Inc., C A. No. 3:05-607
Charles Ball, et al. v. Merck & Co., Inc., C A. No. 3:05-608
Lucky Daniels, et al. v. Merck & Co., Inc., C A. No. 3:05-609
Lovell S. Cottrell, et al v. Merck & Co., Inc., C.A. No. 3:05-610
Charles Orange, et al v. Merck & Co., Inc., C.A. No. 3:05-615
Earl J. Estep, et al v. Merck & Co., Inc., C A. No. 3:05-616
Michael T. Mooney, et al. v. Merck & Co., Inc., C.A. No. 3:05-617
Juanita King v. Merck & Co., Inc., C A. No. 3:05-618
Marjorie Staten, et al. v. Merck & Co., Inc., C A. No. 3:05-619
Bernard Griffin, et al. v. Merck & Co., Inc., C A. No. 3:05-620
Anthony Long, etc. v. Merck & Co., Inc., C A. No. 3:05-621
Cleo D. Gilbert, et al. v. Merck & Co., Inc., C A. No. 3:05-622
Vanessa Wisenbaler v. Merck & Co., Inc., C.A. No. 3:05-626
Charles Nantz, et al. v. Merck & Co., Inc., C.A. No. 3:05-627
Annie Hendrix v. Merck & Co., Inc., C A. No. 3:05-628
Carolyn A. Ward v. Merck & Co., Inc., C A. No. 3:05-629
William E. Kaufman, et al. v. Merck & Co., Inc., C A. No. 3:05-630
Donna C. Russel, et al. v. Merck & Co., Inc., C A. No. 3:05-631
Delbert Rakes, et al. v. Merck & Co., Inc., C.A. No. 3:05-632
Timmy Glass, et al. v. Merck & Co., Inc., et al., C A. No. 3:05-646

District of Massachusetts

Kathleen Martin v. Merck & Co., Inc., et al., C A. No. 1:05-11716

Eastern District of Missouri

Michael Elder, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-1268
Nina Cook, et al v. Merck & Co., Inc., et al., C.A. No. 4:05-1272
George Likins, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-1273
Tyrone Dawson, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-1291
Evelyn Light, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-1463
Fulton Lacy, et al. v. Merck & Co., Inc., et al., C A. No. 4:05-1465

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Eastern District of Missouri (continued)

Roberta Sterling, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-1466
Betty Jean Gant et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-1490
Jane Latham, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-1491
Jefferson Euell, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-1497
Barbara Gustin, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-1514
Martin Zide, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-1520
Ginger Hugo, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-1557

Western District of Missouri

Jimmie Collins v. Merck & Co., Inc., et al., C.A. No. 3:05-5142

Southern District of New York

Douglas A. Spalter, et al. v. Merck & Co., Inc., et al., C.A. No. 1:05-7301

Western District of New York

Brian North v. Merck & Co., Inc., et al., C.A. No. 6:05-6475

Eastern District of Tennessee

James E. Queen, et al. v. Merck & Co., Inc., C.A. No. 1:05-283

Western District of Texas

Sulema L. Banda, et al. v. Merck & Co., Inc., et al., C.A. No. 5:05-950